THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 14673 of 1999

12-07-2006

Between:-

Station House Officer, No.2 Town Police Station, (L&D), Nellore and another.

Petitioners

And

Mitta Mohan Rao and another.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 14673 of 1999

Oral order:

The petitioners assailed the order dated 21-08-1998 of the learned District Judge, Nellore in C.M.A.No. 01 of 1994. The 1st respondent herein had preferred the Miscellaneous Appeal under Section 44 (2-E) of Andhra Pradesh Forest Act against an order of the Authorized Officer viz., the Divisional Forest Officer, Nellore dated 23-12-1993 directing confiscation of the 1st respondent's lorry No. A.P. 26/T.3267. The order of confiscation was recorded on the ground that the lorry was involved in committing a forest offence viz., transportation of Red Sanders wood.

According to the petitioners, on receipt of information on the night of 30-08-1993 by the Sub-Inspector of II-

Town Police Station, Nellore regarding smuggling of Red Sanders Wood in the lorry bearing No. A.P. 26/T.3267, the police proceeded towards Kissan Nagar, halted at Venugopalaswamy thota located in Mypadu road and proceeded by walk and reached Sri Sai Krishna Agro Mills Private Limited and found two lorries and some men thereat. As the men were trying to escape, they were chased and some of them were caught. The police arrested the driver and cleaner of the lorries A.P. 26/T.1 and A.P.26/T.3267 and some coolies also. According to the petitioners during the course of interrogation by the Sub-Inspector of Police, the driver of the lorry bearing No. A.P. 26/T.1 confessed that his owner informed him on 30-08-1993 at 04-00 P.M. to go to Venkatagiri to bring wood and come to Bangarupet to meet him. When he reached Venkatagiri, the owner of the lorry was present at Venkatagiri and thereafter the lorry was taken near a Tank in Minagallu village and there loaded Red Sanders logs. The lorry was then brought to Sri Sai Krishna Agro Mills Private Limited, Nellore. The owner of the lorry bearing No. A.P. 26/T.3267 (1st respondent herein) came there, woke up some persons, brought his lorry reversed and joined it to the other lorry and the Red Sanders logs were shifted from the first lorry to the lorry of the 1st respondent.

It is also the case of the petitioners that other persons

confirmed the presence of the 1st respondent-owner at the alleged scene of offence; that 105 Red Sanders logs were seized from the 1st respondent's lorry and that the lorry had also no permit, registration certificate, insurance policy certificate or any other documentation either for the plying of lorry or transport of the Red Sanders logs. According to the petitioners, the lorry and the logs were seized and after due procedural formalities, the order of confiscation passed by the Divisional Forest Officer on 23-12-1993.

Aggrieved by the same, the 1st respondent filed C.M.A.No. 01 of 1994. The appellate authority, Tribunal, found that at the enquiry proper under the provisions of the Act, the Divisional Forest Officer examined no witnesses except the owner and driver of the lorry and the owner and the driver merely stated that the lorry was carrying a load of Lemons to Calcutta. There was no evidence on record and the entire case before the Divisional Forest Officer, the primary authority, was on the basis of the statements made during the investigation. Neither the police officers before whom the statements were made were examined nor were the statements earlier made marked in evidence or brought on record before the primary authority. In summation, the appellate authority concluded that there was no evidence to support

the conclusion by the primary authority that the lorry of the 1st respondent herein was involved in a forest offence viz., transportation of Red Sanders Wood. Consequent on this conclusion, the appellate authority allowed the miscellaneous appeal of the 1st respondent – C.M.A.No. 01 of 1994 and set aside the order of the Authorized Officer dated 23-12-1993 confiscating the lorry.

The conclusion of the appellate authority that there was no evidence on record to sustain the conclusion of the Authorized Officer that the 1st respondent's lorry was transporting Red Sanders, is impeccable. The learned Government Pleader is unable to establish before this court, on the basis of the material on record that any witnesses other than the driver and the owner (the 1st respondent herein) of the lorry were examined in the inquiry before the Authorized Officer. The testimony of the driver and owner of the lorry before the Authorized Officer supports their defence of denial of the allegations.

In the aforesaid circumstances, no error is discernible in the order dated 21-08-1998 in C.M.A.No. 01 of 1994. The Bank guarantee, if any, furnished by the 1st respondent for obtaining release of the vehicle/lorry, pending either before primary, appellate authority or writ proceedings, shall be returned after due acknowledgement. There are no merits. The writ petition

is accordingly dismissed. No costs.

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GODA RAGHURAM, J

Dated:12-07-2006
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